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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,354	04/20/2004	Michael Burrows	600189.345	2588
29858	7590	09/20/2007		
THELEN REID BROWN RAYSMAN & STEINER LLP			EXAMINER	
PO BOX 1510			RADTKE, MARK A	
NEW YORK, NY 10150-1510				
			ART UNIT	PAPER NUMBER
			2165	
			MAIL DATE	DELIVERY MODE
			09/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,354

Applicant(s)

BURROWS, MICHAEL

Examiner

Mark A. X Radtke

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-12 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-12 and 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Remarks

1. In response to communications filed on 9 July 2007, claim(s) 14 is/are cancelled, claim(s) 6 and 22 is/are amended, and new claim(s) 27 is/are added per Applicant's request. Therefore, claims 6-12 and 15-27 are presently pending in the application, of which, claim(s) 6, 15, 22 and 27 is/are presented in independent form.
2. The rejections under 35 U.S.C. 101 have been withdrawn. Applicant's amendment has necessitated new grounds of rejection (specifically, the rejection of claim 27 under 35 U.S.C. 112, second paragraph).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 6-12 and 15-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "low" in the independent claims is a relative term which renders the claim indefinite. The term "low" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite

degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Response to Arguments

5. Applicant's arguments filed on 9 July 2007 with respect to the rejected claims in view of the cited references have been fully considered but are not deemed persuasive.

In response to Applicant's arguments that "low" is not a relative term, the arguments have been fully considered but are not deemed persuasive. Applicant argues that selected portions of the instant specification support this assertion. The cited portions of the specification provide no explicit definition of "low" or "high", and suffer from the same problem as the claimed invention. Applicant is directed towards MPEP 2173.05(b). "Even if the specification uses the same term of degree as in the claim, a rejection may be proper if the scope of the term is not understood when read in light of the specification." The MPEP lists several examples from case law regarding terms of degree. Although "low" and "high" are not specifically addressed, the example of "relatively shallow" provides support for the Examiner's position (op. cit., section F "Other Terms"). "Relatively shallow" is a phrase for physical devices that is similar to the use of "low" in the context of number comparisons. One of ordinary skill in the art would not know what threshold to use to determine the "low"-ness of a score, so the claimed invention is indefinite.

Applicant goes on to argue that the limitation describing the relation "having weights higher than the low weight" renders the claim definite. However, that language merely establishes a relationship between two relative terms. Without a fixed point of reference (i.e., a threshold for "low"-ness), the determination of whether a score is high or low cannot occur. Furthermore, it is noted that one of ordinary skill in the art would be aware that "high" is "higher than" "low", but the point is moot to the rejection at hand.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications should be directed to the examiner, Mark A. Radtke. The examiner's telephone number is (571)

Art Unit: 2165

272-7163, and the examiner can normally be reached between 9 AM and 5 PM,

Monday through Friday.

If attempts to contact the examiner are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached at (571) 272-4146.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (800) 786-9199.

maxr

14 September 2007


APU MOFIZ
SUPERVISORY PATENT EXAMINER